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Appendix

II.

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Appendix

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
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87821

October 6, 1999

Ms. Helen A. Dick
3323 13th Avenue Court
Moline, IL 61265

No. 87821 - Helen A. Dick, petitioner, v. Commerce Bancshares, Inc., et al., respondents. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 1999.

Appendix

No. 4-98-0921
IN THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

HELEN A. DICK, Plaintiff-Appellant, v. COMMERCE BANCSHARES, INC.; CBI-ILLINOIS, INC.; and PEOPLES MID-ILLINOIS CORPORATION, Defendants-Appellees.	Appeal from Circuit Court of McLean County No. 98-CH-56 Honorable William D. DeCardy Judge Presiding.

ORDER
[filed June 14, 1999]

Plaintiff Helen A. Dick appeals pro se from the orders of the circuit court of McLean County (1) dismissing her complaint against defendants Commerce Bancshares, Inc.; CBI-Illinois, Inc.; and Peoples Mid-Illinois Corporation pursuant to section 2-619 (a) (4) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (a) (4) (West 1996)); (2) directing her to pay sanctions in the amount of $6,757.40; and (3) enjoining her from bringing any further causes of action pertaining in any way to the shares of stock or the transfers thereof that are the subject of the complaint. Plaintiff has paid the sanctions. Plaintiff's issues are whether (1) the alleged fraudulent concealment of the cause of action prevents the application of principles of res judicata or collateral estoppel; (2) her right to due process had been violated; and (3) the award of sanctions amounted to an abuse of discretion. Taken with the case was defendants' motion for sanctions for pursuing a frivolous appeal, filed pursuant to Supreme Court Rule 375 (b) (155 Ill.2d R. 375(b)) and plaintiff's response thereto. We affirm and remand to the trial court for a

determination of the amount of sanctions to be imposed pursuant to Supreme Court Rule 375(b).

The complaint attempted to allege a cause of action for failure to disclose the proper remedy under which plaintiff was to proceed to replace shares of stock in Peoples Bank of Bloomington (Peoples Bank) and recover dividends declared, with interest. In a number of previous appeals, this court has set forth the facts regarding what happened to the shares of stock in the estates of George F. Dick, Jr. (George Jr.) and Althea M. Dick (Althea), plaintiff's adoptive parents, and the acts and omissions of George F. Dick III (George III) and Peoples Bank, trustee and successor trustee, respectively, of the trusts created under those estates. See Peoples Bank v. Dick, 135 Ill.App.3d 1170, 496 N.E.2d 1279 (1985) (unpublished order under Supreme Court Rule 23) (Dick I); Dick v. Dick, 169 Ill. App. 3d 1175, 540 N.E.2d 583 (1988) (unpublished order under Supreme Court Rule 23) (Dick II); In re Estate of Dick, 187 Ill. App. 3d 77, 543 N.E.2d 339 (1989) (Dick III); Dick v. Peoples Mid-Illinois Corp., 195 Ill. App. 3d 654, 552 N.E.2d 385 (1990) (Dick IV); Dick v. Peoples Mid-Illinois Corp., 242 Ill. App. 3d 297, 609 N.E.2d 997 (1993) (Dick V); Peoples Bank v. Dick, No. 4-94-1069 (March 15, 1995) (order of dismissal) (Dick VI); Peoples Bank v. Dick, 286 Ill.App.3d 1147, ___N.E.2d ___ (1997) (unpublished order under Supreme Court Rule 23) (Dick VII). Because this court and the parties are fully aware of the facts, they will be discussed only as necessary for an understanding of this court's disposition.

In September 1982, Peoples Bank, as successor trustee, brought an action against George III, as former trustee, in which it was determined that the transfer of shares to George III prior to Althea's death on October 10, 1976, violated the provisions of George Jr.'s will. In that action, George III was directed to account for all

shares between March 31, 1959, and October 10, 1976. Prior to the accounting being prepared, Peoples Bank and George III settled. Plaintiff, who was a defendant and counterclaimant against George III in that case, attempted to challenge the settlement on appeal, but was prevented from doing so because she had not challenged the propriety of the settlement in the trial court. Dick I, 135 Ill. App. 3d 1170, 496 N.E.2d 1279 (unpublished order under Supreme Court Rule 23). Subsequently, plaintiff unsuccessfully attempted to open the estates of both of her parents. Dick II, 169 Ill.App.3d 1175, 540 N.E.2d 583 (unpublished order under Supreme Court Rule 23); Dick III, 187 Ill.App.3d 77, 543 N.E.2d 339. Those actions were barred by the application of the doctrine of res judicata. In May 1989, plaintiff sued Peoples Bank for breaching its fiduciary duty as trustee to her by, among other things, not informing her of facts necessary for her to protect her interests as beneficiary. One of the defendants in that case was Peoples Mid-Illinois Corporation, the holding company of Peoples Bank. Dick IV, 195 Ill.App.3d at 655-58, 552 N.E.2d at 386-88. This court reversed in part the dismissal of plaintiff's complaint and remanded to allow plaintiff to pursue an action to recover for alleged violations of fiduciary duties owed to her by Peoples Bank as successor trustee. Dick IV, 195 Ill.App.3d at 660, 552 N.E.2d at 389.

On remand, plaintiff amended her complaint to allege two counts. In Count I, plaintiff alleged Peoples Bank breached its fiduciary duty by retaining shares of the holding company as an investment of the trust, the interest of the holding company in accumulating profits instead of paying cash dividends conflicted with the interests of persons having a beneficial interest in the shares of the holding company, and the trust suffered great losses while the holding company benefitted as a result of the alleged breach of fiduciary duty by Peoples

Bank. In Count II, plaintiff alleged Peoples Bank breached its fiduciary duty by failing to inform her of facts relating to actions taken by George III, including his voting for stock dividends and splits of holding company stock while he was chairman of the board of directors of Peoples Bank; falsely representing to her that it "lost" one count of its 1982 complaint against George III; failing to file an action against George III for four years within the date of his resignation as trustee; failing to inform her of facts surrounding the settlement agreement; and failing to serve her with undivided loyalty. Dick V, 242 Ill.App.3d at 300-02, 305, 609 N.E.2d at 1000-01, 1003. This court determined that Peoples Bank could not have breached any duty owed to plaintiff by retaining stock in a holding company as an investment or by allowing George III to vote shares of the holding company stock because both of those acts were expressly provided for by George Jr.'s will. This court further determined that the only cause of action plaintiff could state on Count II revolved around the alleged failure to disclose the settlement agreement and plaintiff was absolutely barred from relitigating that issue. This court also found that plaintiff had not alleged any cause of action against Peoples Bank as successor trustee for failing to inquire into any improper activities of the predecessor trustee because Peoples Bank had properly done all those things that it was obligated to do as a successor trustee by pursuing the 1982 action against George III. As a result, the dismissal of plaintiff's complaint for failure to state a cause of action was affirmed. Dick V, 242 Ill.App.3d at 304-06, 609 N.E.2d at 1003-04.

In the case at bar, plaintiff's complaint alleged that Peoples Mid-Illinois Corporation and its successor holding companies were unjustly enriched by the failure to disclose or the fraudulent concealment of the existence of a cause of action against the holding

company by not telling her that Peoples Bank could not sue its parent. According to the complaint, the information was concealed by reason of the nature of the pleadings Peoples Bank filed in the earlier actions and by the settlement with George III. The complaint alleged the following facts concerning the relationship of the various defendants. On March 1, 1995, as a result of a pooling of interests, Commerce Bancshares, Inc., acquired Peoples Bank and changed its name to Commerce Bank, Bloomington, Illinois. On March 8, 1995, Peoples Mid-Illinois Corporation merged into CBI, Illinois, Inc. Effective May 10, 1996, Commerce Bancshares, Inc., was allowed to consolidate Commerce Bank, Bloomington, Illinois, into Commerce Bank, National Association.

Defendants filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 1996)) on the grounds (1) plaintiff's complaint failed to state a cause of action (735 ILCS 5/2-615(a) (West 1996)), (2) the action was barred by prior order of this court (Dick IV, 195 Ill.App.3d at 659, 552 N.E.2d at 389), and (3) the action was barred by the statute of limitations (735 ILCS 5/2-619(a) (5) (West 1996)). In response to the motion, plaintiff argued, among other things, that the action was not barred by collateral estoppel. Although the defendants filed a series of documents in support of their motion for sanctions, no affidavits were filed in support of or in opposition to the portion of the motion made pursuant to section 2-619(a) (5).

An agreed statement of facts filed with this court indicates that no witnesses testified at the hearing on the motion to dismiss. Plaintiff described to the trial court that her case was an action to recover shares of stock in Peoples Bank held in a constructive trust imposed in McLean County case No. 82-CH-124 on March 2, 1984, which was Peoples Bank's action against

George III. In response to [defendants'] assertion of res judicata as a basis for barring the action, plaintiff argued that defendants had not raised res judicata as a bar to the action in the written motion to dismiss. The trial court construed the second paragraph of [defendants'] combined motion to dismiss as alleging res judicata and took the matter under advisement. On September 28, 1998, the trial court dismissed plaintiff's complaint because (1) it was barred by the application of the doctrines of res judicata and collateral estoppel, and (2) the bringing of that action violated this court's directive in Dick IV, 195 Ill.App.3d at 659, 552 N.E.2d at 389. Subsequently, plaintiff's motion for reconsideration was denied, and the trial court ordered plaintiff to pay sanctions in the amount of $6,757.40.

Because the trial court did not rule on whether the complaint stated a cause of action, that issue has not been presented in this appeal. Nevertheless, this court must comprehend the nature of the cause of action plaintiff was attempting to allege in order to address the issues on appeal.

In Dick IV, 195 Ill.App.3d at 659-60, 552 N.E.2d at 389, plaintiff was barred from relitigating improprieties regarding (1) the 1959 transfer of shares to George III, (2) the settlement between Peoples Bank and George III, (3) George III's use of Peoples Bank's shares as collateral for personal loans, (4) actions of the bank and holding company in collecting bank shares plaintiff alleged belonged to George Jr.'s estate, and (5) Peoples Bank allowing shares owned by George III and the estate of George Jr. to be commingled. However, the court remanded the cause to allow plaintiff to pursue actions based on alleged violations of fiduciary duties. Because the action in the case at bar is based on alleged violations of fiduciary duties, this court's decision in the case of Dick IV, 195 Ill.App.3d at 659-60, 552 N.E.2d at 389, did not

expressly bar an action of this type, and that language could not form the basis of dismissing the complaint in this case. However, in a subsequent decision of this court, it was stated that plaintiff was absolutely barred from relitigating the issue of whether Peoples Bank violated a fiduciary duty by failing to inform her of facts surrounding the settlement with George III. Dick V, 242 Ill.App.3d at 305, 609 N.E.2d at 1003. The language in that case does support the dismissal of the complaint here to the extent the complaint attempts to allege a cause of action derived from a violation by Peoples Bank of a fiduciary duty to inform plaintiff regarding her rights relative to the recovery of the same shares of stock, dividends, and interest.

Under section 2-619(a) (4) of the Code, the circuit court may dismiss if the cause of action is barred by a prior judgment. 735 ILCS 5/2-619(a) (4) (West 1996).

> "The doctrine of res judicata provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action. Rein v. David A. Noyes & Co., 172 Ill.2d 325, 334, 665 N.E.2d 1199, 1204 (1996). This doctrine extends not only to the issues actually decided in the original action but also to those that could have been decided. Rein, 172 Ill.2d at 334-35, 665 N.E.2d at 1204. ***
>
> ***
>
> There are three elements necessary to invoke the doctrine of res judicata: (1) a final judgment on the merits rendered by a court of competent

> jurisdiction, (2) an identity of the cause of action, and (3) an identity of the parties or their privies. Rein, 172 Ill.2d at 335, 665 N.E.2d at 1204, citing Downing v. Chicago Transit Authority, 162 Ill.2d 70, 73-74, 642 N.E.2d 456 [, 458] (1994). 'If the three elements necessary to invoke res judicata are present, res judicata will bar not only every matter that was actually determined in the first suit, but also every matter that might have been raised and determined in that suit.' Rein, 172 Ill.2d at 338, 665 N.E.2d at 1205-06, citing Torcasso v. Standard Outdoor Sales, Inc., 157 Ill.2d 484, 490 [, 626 N.E.2d 225, 228] (1993)." Mason v. Parker, 295 Ill.App.3d 1096, 1097-98, 695 N.E.2d 70, 71 (1998).

Claims are considered the same cause of action if they arise from a single set of operative facts, even though recovery is sought under different theories. River Park, Inc. v. City of Highland Park, 184 Ill.2d 290, 311, 703 N.E.2d 883, 893 (1998). The doctrine of res judicata is not inapplicable simply because of a misconception of the remedy available. Thorleif Larsen & Son, Inc. v. PPG Industries, Inc., 177 Ill.App.3d 656, 661, 532 N.E.2d 423, 426 (1988). However, strict application of res judicata may be relaxed when fundamental fairness requires. People v. Whitehead, 169 Ill.2d 355, 371, 662 N.E.2d 1304, 1312 (1996); People v. Hayes, 279 Ill.App.3d 575, 580, 665 N.E.2d 419, 422 (1996). Simply arguing fundamental fairness should be applied to relax res judicata in a particular case is not sufficient, and relaxation of the doctrine will not occur unless the "cause and prejudice" test is satisfied. People v. Franklin, 167 Ill.2d 1, 15, 656 N.E.2d 750, 756 (1995).

"Cause" is an objective factor impeding the party's efforts to raise the claim, and "prejudice" is an error so infecting the proceeding that due process is violated. Franklin, 167 Ill.2d at 20, 656 N.E.2d at 758.

Plaintiff has previously sued Peoples Mid-Illinois Corporation, as a holding company of Peoples Bank. The other defendants of this litigation only recently acquired Peoples Bank, and plaintiff alleges no theory on which they could be held liable except through the actions of Peoples Mid-Illinois Corporation. Indeed, Peoples Mid-Illinois Corporation is not alleged to have been the trustee, but only the holding company of the trustee bank. Therefore, even if Peoples Mid-Illinois Corporation's duties and liability to plaintiff, if any, for violation of an alleged fiduciary duty to disclose a cause of action arise only through the actions or inactions of Peoples Bank.

As noted, plaintiff has already sued Peoples Bank and Peoples Mid-Illinois Corporation for withholding information. That earlier case was dismissed, and the dismissal was affirmed. Plaintiff knew she could sue the holding company.

A dismissal, other than for lack of jurisdiction, is an adjudication on the merits for the purpose of the doctrine of res judicata. River Park, Inc., 184 Ill.2d at 303, 703 N.E.2d at 889. There is an identity of the cause of action because plaintiff is relying on the same operative facts she relied on in the earlier case that was dismissed for failure to state a cause of action, even though she is here attempting to utilize a different theory. Peoples Mid-Illinois Corporation was a party to that earlier litigation, and plaintiff could have presented the theory she relies on here in that case. The third element for the application of the doctrine of rea judicata is satisfied because Peoples Mid-Ilinois Corporation was a party to the earlier litigation and the other defendants in this case are privies of Peoples Mid-

Illinois Corporation as successor holding companies. An entity or individual who succeeds to the rights of the property affected by a judgment after the institution of a particular suit and from a party thereto is a privy to the judgment in that suit. Sweeting v. Campbell, 2 Ill.2d 491, 496-97, 119 N.E.2d 237, 240 (1954); Bonanno v. LaSalle & Bureau County R.R. Co., 87 Ill.App.3d 988, 993-94, 409 N.E.2d 481, 485 (1980).

Plaintiff argues she has been denied due process because she has not been given an opportunity to be heard on the alleged cause of action. We interpret plaintiff's argument as requesting that the fundamental fairness exception to the doctrine of res judicata be applied to this case. However, no objective factor has impeded plaintiff's opportunity to raise the claim. The "fraudulent concealment" alleged in the complaint is no more than a conclusory statement that she did not know until March 16, 1998, that she had a cause of action against the holding company for replacement of shares and recovery of dividends and interest.

In an affidavit attached to the complaint, plaintiff stated that Peoples Bank, as trustee, "never revealed to me that the Bank could not sue its parent company and has never revealed to me the existence of any cause of action against the holding company." The affidavit further states that, until March 16, 1998, she did not know Peoples Bank could not sue its parent holding company and that a cause of action existed against the holding company for the replacement of the shares. In support of her statement that she has discovered a cause of action against the holding company, plaintiff's affidavit cites "18 C.J.S. Corporations [ ] §281." That section refers to an action for conversion and to recover damages for the wrongful transfer of stock on the books of a corporation. 18 C.J.S. Corporations §281 (1990). Also attached to the complaint were copies of Peoples Bank's stockholders' ledger. That, and the

allegations of the complaint, seems to indicate that the improper transfer of shares to which the complaint refers were by Peoples Bank, and not defendants. If that is true, any potential liablity of defendants is derived through the liability of Peoples Bank to plaintiff. Actions concerning Peoples Bank's liability to plaintiff have been finally determined. Those decisions are conclusive of the issues, and plaintiff may not relitigate.

Even assuming the plaintiff's complaint is attempting to allege the violation of a duty defendants owed plaintiff, independent of any duty Peoples Bank owed plaintiff (perhaps some form of a shareholder derivative action), plaintiff has presented no evidence that any deficiency in the earlier proceedings precluded her from presenting the cause of action she now asserts. Plaintiff has pointed to nothing other than her own failure to understand the nature of the legal proceedings and the requirements of the law. The fact that plaintiff may have previously proceeded against Peoples Mid-Illinois Corporation on a different theory, instead of the one she how attempts to present, does not raise a fundamental fairness concern. If plaintiff knew she could sue Peoples Mid-Illinois Corporation, it is irrelevant that Peoples Bank did not tell her it could not sue Peoples Mid-Illinois Corporation. A party who represents herself in a complicated case accepts the risk of not sufficiently understanding how to best protect her interests.

After plaintiff's complaint was dismissed, she filed a motion for reconsideration which was heard on October 29, 1998. On that date, plaintiff filed a written response to defendants' memorandum. According to the agreed statement of facts, the trial court "glanced through the document" and saw nothing indicating a fraudulent concealment. We have also reviewed the document and agree with the trial court. At most, this

document and the plaintiff's affidavit attached to her complaint establish that she failed to do her legal research while her earlier case against Peoples Mid-Illinois Corporation was pending.

The doctrine of res judicata bars this action. Plaintiff's complaint was properly dismissed. We need not discuss whether the application of the related doctrine of collateral estoppel also bars this action.

The next issue is whether the imposition of sanctions against plaintiff was an abuse of discretion. Sanctions may be imposed against a party who improperly files a pleading with the court. Supreme Court Rule 137 states, in relevant part:

> "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any proper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or

> other paper, including a reasonable attorney fee." 155 Ill.2d R. 137.

The standard for evaluating a party's conduct under Rule 137 is one of reasonableness under the circumstances existing at the time of the filing. Toland v. Davis, 295 Ill.App.3d 652, 656, 693 N.E.2d 1196, 1199 (1998). The determination of whether to impose sanctions is a matter of discretion with the trial court, and the trial court's determination will not be overturned on appeal absent an abuse of discretion. Toland, 295 Ill.App.3d at 654, 693 N.E.2d at 1198.

Plaintiff does not challenge the reasonableness of the amount of the sanction or the sufficiency of the affidavit of defendants' attorney. Plaintiff argues that she did not name as a party any person who participated in the 1959 transfer of shares and no court said she could not sue on a cause of action that was fraudulently concealed from her. However, no facts are alleged in the complaint that, if proved, would establish a fraudulent concealment. As already noted, plaintiff was informed by this court that she was barred from bringing another action based on the alleged failure of Peoples Bank to inform her of facts surrounding the settlement with George III, and this case involves the holding company named as a defendant in that case and its successors. Plaintiff has been involved in numerous cases where the doctrine of res judicata has been applied to preclude her litigating to recover the same shares of stock, dividends, and interest. The trial court could reasonably found that plaintiff brought this action for the purpose of harassment. The award of sanctions was not an abuse of discretion.

Taken with the case is defendants' motion for sanctions pursuant to Rule 375 (b) for bringing a frivolous appeal. A party who successfully defends a trial court's award of sanctions or attorney fees should not be forced to bear the costs of defending the award

on appeal. Kubiak v. City of Kewanee, 228 Ill.App.3d 605, 608, 592 N.E.2d 1200, 1202 (1992). It would have been readily apparent to a reasonable, prudent attorney that the instant appeal could not be brought in good faith as it is absolutely lacking in any legal basis. Petitioner's pro se status does not exempt her from compliance with the supreme court rules for appellate practice. Therefore, the defendants' motion for sanctions is granted. This cause is remanded to the trial court for a hearing to determine the amount of reasonable attorney fees and costs incurred by the Bank in connection with this frivolous appeal. See Kubiak, 228 Ill.App.3d at 608, 592 N.E.2d at 1203; Aroonsakul v. Flanagan, 155 Ill.App.3d 223, 230, 507 N.E.2d 1, 6 (1987).

The judgment of the circuit court of McLean County is affirmed, the defendants' motion for sanctions is allowed, and the cause is remanded for determination of the amount of fees and costs of this appeal.

Affirmed; cause remanded with directions.

McCULLOUGH, J., with COOK and STEIGMAN, JJ., concurring.

Appendix

APPEAL TO THE FOURTH DISTRICT
APPELLATE COURT FROM THE
CIRCUIT COURT OF McLEAN COUNTY

HELEN A. DICK,
Plaintiff-Appellant,
v. No. 98-CH-56
COMMERCE BANCSHARES, INC.,
CBI-ILLINOIS, INC., and PEOPLES
MID-ILLINOIS CORPORATION,
Defendants-Appellees.

STIPULATION AS TO AGREED STATEMENT OF
FACTS IN LIEU OF A REPORT OF PROCEEDINGS
[filed December 17, 1998 in the Appellate Court]

Pursuant to Supreme Court Rule 323 (d), the parties (Helen A. Dick, pro se, and defendants by their attorneys, Samuels, Miller, Schroeder, Jackson & Sly) stipulate to the facts set forth below and to the filing of this agreed statement of facts without certification and in lieu of a report of proceedings.

1. Neither the July 15, 1998 nor the October 29, 1998 proceedings before Judge William D. DeCardy were recorded by a court reporter.

2. No witnesses were called. Neither the defendants' counsel nor Ms. Dick was sworn as a witness.

3. The July 15, 1998 proceedings (on Defendants' Motion to Dismiss) were brief. The court asked plaintiff to state her cause of action. She described this as an action to recover shares of the Capital Stock of the Peoples Bank of Bloomington held in a constructive trust imposed by Judge Richard M. Baner's Order of March 2, 1984 [in McLean County 82-CH-124]. Attorney Shupenus argued that Helen A. had already had her day in court and that her action was

barred by res judicata. Plaintiff argued that defendants had not alleged res judicata. The court stated that paragraph 2 at page 2 of defendants' combined motion [to dismiss] could be construed as alleging res judicata. The court took the matter under advisement.

4. On September 28, 1998, the trial court entered a written order: (a) finding that the complaint is barred by res judicata and collateral estoppel; (b) finding that the bringing of the instant action is a violation of the Fourth District Appellate Court's 1990 order in a related case; (c) allowing Defendants' Motion to Dismiss pursuant to 735 ILCS 5/2-619; (d) dismissing plaintiff's complaint, with prejudice; and (d) setting an October 29, 1998 hearing on Defendants' Motion for Sanctions.

5. The October 29, 1998 proceedings were of 20 minutes duration, including an approximate 10 minute recess during which defendants' counsel prepared the written order. The court allowed defendants' Motion for Sanctions, ordering plaintiff to pay sanctions in the amount of $6,757.40 (which included defendants' attorney fees through October 29, 1998) and ordering plaintiff to refrain from bringing any further cause of action pertaining in any way to the stock at issue or any transfer thereof. The court did not allow oral argument on plaintiff's Motion for Rehearing and Reconsideration. The court denied her said motion, saying that it had glanced through the document she had filed that day and did not see any fraudulent concealment.

HELEN A. DICK (pro se)
Helen A. Dick

COMMERCE BANCSHARES, INC., CBI-ILLINOIS, INC. and PEOPLES MID-ILLINOIS CORPORATION,

Appendix

By SAMUELS, MILLER,
SCHROEDER,
JACKSON & SLY

By _____
Its Attorneys

Appendix

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

HELEN A. DICK,
Plaintiff,
v.
COMMERCE BANCSHARES, INC., CBI-ILLINOIS, INC.; and PEOPLES MID-ILLINOIS CORPORATION,
Defendants.

No. 98-CH-56

ORDER
[filed October 29, 1998;
Vol. III, C-657]

Defendants' Motion for Sanctions, including imposition of injunctive relief, is allowed. Plaintiff is ordered to pay sanctions in the amount of $6,757.40 within 30 days. Plaintiff is also ordered to refrain from bringing any further cause of action pertaining in any way to the stock at issue or any transfer thereof.

Plaintiff's Motion for Reconsideration and Rehearing is denied.

WILLIAM D. DeCARDY,
Judge

Appendix

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

HELEN A. DICK,
Plaintiff,
v. No. 98-CH-56
COMMERCE BANCSHARES, INC., CBI-ILLINOIS, INC.; and PEOPLES MID-ILLINOIS CORPORATION,
Defendants.

ORDER OF DISMISSAL
[filed September 28, 1998;
Vol. II, C-487]

This cause having come in [on] for hearing on July 15, 1998, on Defendants' Motion to Dismiss, Plaintiff appearing pro se and Defendants appearing by counsel, Robert Shupenus and Rhonda Heinz, the Court, having heard the arguments and considered Defendants' Memorandum in Support and Plaintiff's Response to Defendants' Memorandum and Supplement to Plaintiff's Opposition, being now fully advised, finds:

(1) Any cause of action stated or attempted to be stated in the facts alleged in the complaint is barred by the doctrines of res judicata and collateral estoppel; and

(2) The bringing of the instant action is a violation of the order of the Fourth District Appellate Court in Dick v. Peoples Mid-Illinois Corp., 195 Ill.App.3d 654 (1990).

WHEREFORE, IT IS HEREBY ORDERED Defendants' Motion to Dismiss should be and is allowed pursuant to 735 ILCS 5/2-619, and the Complaint is dismissed, with prejudice; and

IT IS FURTHER ORDERED this cause is set for hearing on Defendants' Motion for Sanctions on October 29, 1998 at 3:00 p.m.

Dated this 28th day of September, 1998.

WILLIAM D. DeCARDY
Judge

Appendix

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

HELEN A. DICK,
Plaintiff,
v. No. 98-CH-56
COMMERCE BANCSHARES, INC., CBI-ILLINOIS, INC.; and PEOPLES MID-ILLINOIS CORPORATION,
Defendants.

COMPLAINT
[filed April 22, 1998,
Vol. I, C-5]

Plaintiff HELEN A. DICK names COMMERCE BANCSHARES, INC.; CBI-ILLINOIS, INC.; and PEOPLES MID-ILLINOIS CORPORATION as defendants.

1. As shown by principles of law and facts set forth with particularity hereinbelow (and in the affidavit of Helen A. Dick attached hereto as Exhibit "C" and incorporated herein), this action is not barred by laches, limitations, estoppel or res judicata. Collateral estoppel applies against the defendants. This cause of action/remedy was fraudulently concealed from plaintiff and she did not know or discover until on or about March 16, 1998 that a cause of action existed against the holding company for replacement of shares of the Capital Stock of the Peoples Bank of Bloomington and recovery of dividends declared, with interest. 18 C.J.S. Corporations, § 281.

2. During November 28, 1994 proceedings in a related case (McLean County 82-CH-124), an attorney for beneficiary Helen A. Dick's trustee (Peoples Bank

of Bloomington) referred to her lack of knowledge as follows:

> "The case was never that she had no remedy. The case was that she didn't apparently know what her remedy was * * *." (Transcript, 82-CH-124, Vol. XIV, page 34 at line 5.)

3. As set forth in beneficiary Helen A. Dick's aforesaid affidavit (Exhibit "C"), the trustee Bank has never disclosed said remedy to her.

4. COMMERCE BANCSHARES, INC., a bank holding company, was incorporated in Missouri on August 4, 1966. Pursuant to pages A-1 and A-40 of Securities and Exchange Commission Form 10-K as published in its 1995 Annual Report, said COMMERCE BANCSHARES, INC. acquired The Peoples Bank (Bloomington, IL), an Illinois state bank, on March 1, 1995, in a transaction recorded as a pooling of interests; said COMMERCE BANCSHARES, INC. "issued common stock valued at $82.8 million"; and "The Peoples Bank had assets of $444 million at the date of acquisition." The name of said The Peoples Bank was changed to "Commerce Bank." Said "Commerce Bank, Bloomington, IL"; "Commerce Bank, National Association, Peoria, IL"; and "CBI-Illinois, Inc., Kansas City, Mo." are separately listed at page 11 of said Form 10-K as being three of the more than thirty subsidiaries of the aforesaid COMMERCE BANCSHARES, INC. "at March 1, 1996."

5. On March 8, 1995, PEOPLES MID-ILLINOIS CORPORATION (a Delaware corporation which, prior to March 1, 1995 had been a one-bank holding company with its principal place of business in the Peoples Bank Building in Bloomington, Illinois, and with said "The Peoples Bank" as its only subsidiary) was merged into CBI-ILLINOIS, INC. Said CBI-ILLINOIS, INC. was incorporated September 30, 1991

as a Delaware corporation authorized to issue exactly 1,000 shares of common stock of the par value of $1.00 per share. The Certificate of Incorporation of the surviving corporation is (without amendment) the September 30, 1991 Certificate of Incorporation of said CBI-ILLINOIS, INC. All of said 1,000 shares are owned by the aforesaid Commerce Bancshares, Inc. All three directors of said CBI-ILLINOIS, INC. at the time of its incorporation were officers of the aforesaid Commerce Bancshares, Inc.

6. On or about May 10, 1996, the Comptroller of the Currency authorized the aforesaid COMMERCE BANCSHARES, INC. "to consolidate Commerce Bank, Bloomington, Illinois, into Commerce Bank, National Association, Peoria, Illinois, effective as of May 10, 1996," the resulting bank title to be "Commerce Bank, National Association." The Comptroller simultaneously certified said "Commerce Bank, National Association" (the resulting bank) "to increase its common stock to $3,305,000 as of May 10, 1996."

7. George F. Dick, Jr. was an attorney who died May 8, 1955, leaving a will dated July 14, 1953, which was admitted to probate in the County (now Circuit) Court of McLean County. His heirs, devisees and legatees were his wife (Althea M. Dick); their three natural children (Helen [who had no middle name or initial], Eleanor, and George F. Dick III, all of whom died in 1992); and Helen Althea Dick (hereinafter "Helen A," the plaintiff). Said Helen A. Dick was Eleanor's only child, was born during Eleanor's first marriage, was raised by her said maternal grandparents, and was adopted by them in 1935, when she was three years old. A copy of said will of George F. Dick, Jr. is attached hereto as Exhibit "A."

8. George F. Dick, Jr.'s said will gave said Althea M. Dick "full possession and sole management" of all her late husband's property "for as long as she

shall live," with the right to sell any or all of the property for her own purposes and to consume proceeds of any such sale without having to first exhaust her own assets. Althea accepted all benefits of her late husband's will, which included the following provisions:

> "No interest under this Will shall be transferable or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors ***."

9. Transfers of interest which are prohibited by a spendthrift provision of a will are void. McKeown v. Pridmore, 310 Ill.App. 634, 645-646 (lst Dist. 1941).

10. Althea M. Dick and George F. Dick III were named and served as Co-Executors of said will of George F. Dick, Jr.

11. The only trust established by George Jr.'s said will was f/b/o the aforesaid three daughters (including plaintiff) and could not be funded with property of George Jr.'s estate until after the death of Althea, who (as set forth above) had the power to sell any or all property and consume sales proceeds.

12. In his said will, George Jr. referred to mutual provisions of his wife's will as follows:

> "My wife, Althea M. Dick, in her Will has established a Trust similar to the one I have established here and I authorize the Trustee in each of said Wills to consolidate the Trust in my Will and my wife's Will and to operate it as one Trust Estate."

13. The law does not permit a beneficiary in a will to accept that which benefits him and reject that which operates to his prejudice. Oglesby v. Springfield Marine Bank, 395 Ill. 37, 45 (1946).

14. Having accepted all benefits of George Jr.'s said will, Althea could not transfer any interest in stock shares (including but not limited to shares which she owned individually) except according to the terms and provisions of her late husband's will, including the aforesaid trust f/b/o the three daughters. Oglesby, at 45.

15. In a related case (McLean County 82-CH-124), the court found (Order entered March 2, 1984) that "any assignment of interest in shares by Althea Dick prior to her death was violative of the limiting provisions of the Will of George F. Dick, Jr., " a finding which is in keeping with Oglesby.

16. Upon the date of his death in 1955, George F. Dick, Jr. owned 91 of the total of 2,000 issued and outstanding shares of the Capital Stock of the Peoples Bank of Bloomington and Althea M. Dick (individually) owned 58 of said 2,000 shares. Althea (individually) purchased an additional 3 shares on or about March 27, 1959.

17. On or about September 19, 1955, the aforesaid 91 shares became registered (in the Bank's Stock Holders Ledger and on stock certificates representing, respectively, 80 and 11 shares) as follows:

"Althea M. Dick, Life Tenant Under
Will of Geo. F. Dick, Jr., Deceased."

18. Notice of a will gives a corporation, when asked to transfer shares of its stock, the duty to inquire into said will and the duty to refuse to effect any transfer, payment and/or delivery of shares (and any subsequent transfer, payment and/or delivery of shares) that is violative of the terms and provisions of said will. Seymour v. National Biscuit Co., 107 F.2d 58, 62 (3d Cir. 1939). Daily v. Universal Oil Products Co., 76 F.Supp. 349, 371 (N.D. Ill. 1947).

19. On or about March 31, 1959, the registration of 80 shares of the Capital Stock of the Peoples Bank of

Bloomington was transferred from "Althea M. Dick, Life Tenant Under Will of Geo. F. Dick, Jr., Deceased," to said George F. Dick III (individually). Said George III (an attorney) had been employed by the Bank as Assistant Trust Officer in 1947 and had become a Vice President and a director of the Bank in 1950. He became Executive Vice President in 1960 and was elected President of said Bank in June 1962.

20. In 1967, said George III was both President of the Bank and Chairman of its Board of Directors. He successfully proposed and recommended a 30 for 1 stock dividend and split of the Capital Stock of the Peoples Bank of Bloomington to his fellow directors (at the regular Board of Directors Meeting held June 12, 1967) and to all stockholders present at a Special Stockholders Meeting of July 24, 1967. Effective August 1, 1967, the Capital Stock Account was increased from $200,000.00 to $600,000.00; the total number of shares was increased from 2,000 to 60,000; and the par value was reduced from $100.00 per share to $10.00 per share.

21. Peoples Mid-Illinois Corporation, a Delaware corporation, was incorporated May 17, 1971 as a corporation authorized to issue exactly 60,000 shares of capital stock of the par value of $10.00 each.

22. From in or about January 1972 (if not before) until his death in 1992, the aforesaid George F. Dick III was always a director of said holding company (Peoples Mid-Illinois Corporation) and/or chairman of its board of directors.

23. During the period June 30, 1972 through July 3, 1972, all shares of the Capital Stock of the Peoples Bank of Bloomington (including all 2,730 shares which were property of the estate of George F. Dick, Jr. and all 1,830 shares which were Althea's individual property) and the Bank's aforesaid Stock Holders' Ledger were converted by said Peoples Mid-

Illinois Corporation to its own use and beneficial enjoyment. Copies of eight pages of said Stock Holders Ledger are attached hereto as Exhibit "B." Each page having any entry for the year 1972 bears the following words:

"PBB SHARES CONVERTED TO
PEOPLES MID-ILLINOIS CORP."

24. Althea died October 10, 1976, at which time said George III became testamentary trustee of the aforesaid George F. Dick, Jr. testamentary trust and began acting as executor of a will of Althea M. Dick dated January 23, 1969 (McLean County 76-P-554).

25. On or about December 26, 1978, Peoples Bank of Bloomington began acting as successor trustee of the aforesaid George F. Dick, Jr. trust f/b/o the three daughters (including Helen A. Dick) and trustee of trusts (f/b/o Helen A. Dick et al.) set forth in the aforesaid 1969 will of Althea M. Dick.

26. The trust relation between the Bank and beneficiary Helen A. Dick has not ended.

27. The principle of caveat emptor does not apply to fiduciary relationships. The trustee must not only be truthful in all his representations, he must not remain silent concerning any matter that would throw light on the trust estate. 90 C.J.S. Trusts § 247, p. 240. The beneficiaries must not only have been acquainted with the facts, they must know of their rights and have been apprised of the law, and of how the facts would be dealt with by a court of equity. 76 Am Jur 2d Trusts, § 357, p. 359. A trustee's failure to disclose amounts to fraudulent concealment. Chicago Park District v. Kenroy, 78 Ill.2d 555, 562 (1980).

28. The dominant characteristic of a holding company is the ownership of securities by which it is possible to control or substantially influence the policies and management of one or more operating companies in a particular enterprise. North American

Co. v. Securities & Exchange Commission 327 U.S. 686, 701, 66 S.Ct. 785, 794, 90 L.Ed. 945, 956.

29. On or about September 22, 1982, Peoples Bank of Bloomington (sole subsidiary of the aforesaid Peoples Mid-Illinois Corporation) filed a seven-count pleading as to the estates of George F. Dick, Jr. and Althea M. Dick (McLean County 82-CH-124). Said trustee Bank did not name said holding company as a party to any count. Counts V and VII were dismissed by the court on January 18, 1983. The Bank voluntarily dismissed its Count VI (a count for discovery from Helen A. Dick and others) on February 15, 1984. The plaintiff Bank and defendant George F. Dick III were the only parties to the only counts (i.e., Counts I, II, III and IV) then remaining.

30. On March 2, 1984, Circuit Judge Richard M. Baner entered a partial summary judgment order. He found, among other things, that "any assignment of interest in shares by Althea Dick prior to her death was violative of the limiting provisions of the Will of George F. Dick, Jr."; that defenses of res judicata, estoppel, laches and/or limitations had not been established; and that an accounting was to be submitted as to all shares for the period March 31, 1959 to the October 10, 1976 date of Althea's death.

31. Said findings were against the interests of holding company director George F. Dick III, and also against the interests of his privy, Peoples Mid-Illinois Corporation. Collateral estoppel applies against George III's privy, Peoples Mid-Illinois Corporation, and its successor holding company (or companies). Housing Authority v. YMCA, 101 Ill.2d 246, 252 (1984).

32. Before any accounting was submitted, the Bank and George III entered a settlement agreement as to George III's (individual) liability and the case was dismissed (over the objection of Helen A. Dick) per stipulation between the Bank and George III on March

14, 1984. Neither of the parties (i.e., the Bank and George III) appealed the orders entered in the Bank's 1982-1984 action.

33. There was nothing before the court during the Bank's 1982-1984 action to show that George F. Dick III proposed and recommended the aforesaid (30 for 1) 1967 stock dividend and split or to show that he had been a director of Peoples Mid-Illinois Corporation since January 1972 (if not before).

34. The Bank's said 1982 complaint concealed and/or failed to disclose the existence of any cause of action against said holding company. As set forth in the Affidavit of beneficiary Helen A. Dick (Exhibit "C" attached above), the trustee Bank has never told her that there was any cause of action against the holding company and has never told her that the Bank could not sue its parent company.

35. At all times material hereto, Peoples Mid-Illinois Corporation and its successor holding company (or companies) have known of the existence of this cause of action and have known of (among other things) 1982 et seq. litigation as to the estates of George F. Dick, Jr. and Althea M. Dick in which its subsidiary (the Bank) was participating as a trustee. Peoples Mid-Illinois Corporation and its successor holding company (or companies) have known and/or approved of the aforesaid concealment/failure to disclose.

36. Where a third person is in privity with or occupies an agency relationship with the defendant, then the defendant's knowledge or approval of the third person's concealment is sufficient to bar/toll a limitation period. Chicago Park District v. Kenroy, 78 Ill.2d 555, 563 (1980).

37. As set forth in the aforesaid Affidavit of Helen A. Dick (Exhibit "C"), she was defrauded by the Bank's aforesaid 1972 pleading. She did not know or discover until on or about March 16, 1998, that the Bank

could not have sued its parent company and that the remedy for the aforesaid 1972 conversion was and is an action against the holding company for replacement of shares of the Capital Stock of the Peoples Bank of Bloomington.

38. An action that has been fraudulently concealed may be commenced at any time within 5 years of discovery of said action. 735 ILCS 5/13-215.

39. On or about July 9, 1985, the aforesaid one-bank holding company (Peoples Mid-Illinois Corporation, a Delaware corporation) purchased an additional bank (First National Bank of Bloomington) with funds derived from the operation of Peoples Bank of Bloomington. The two banks were subsequently operated as one state bank ("The Peoples Bank") under the 1869 charter of Peoples Bank of Bloomington.

40. On or about January 21, 1993, said Peoples Mid-Illinois Corporation acquired all of the outstanding stock of Lexington Bancshares, Inc. and its wholly owned subsidiary, Lexington Bank. On January 22, 1993, Lexington Bank was "merged with and into" the aforesaid "The Peoples Bank."

41. Pursuant to page 1 of a Prospectus/Proxy Statement of Commerce Bancshares, Inc. dated December 23, 1994 and "mailed on or about December 29, 1994," said "Prospectus is part of a Registration Statement on Form S-4 (the 'Registration Statement') filed by Commerce with the Securities and Exchange Commission (the 'SEC') pursuant to the Securities Act of 1933, as amended." Pursuant to page 16 of said document, at that date (December 23, 1994), Commerce Bancshares, Inc. owned 19,125 shares of the Common Stock of Peoples Mid-Illinois Corporation and said Peoples Mid-Illinois Corporation owned 33,600 shares of the Common Stock of said Commerce Bancshares, Inc. Page 24 of said Prospectus/Proxy Statement contains (among others) the following paragraph:

> "At the Effective Time, the separate corporate existence of Peoples will terminate and all of the assets and liabilities of Peoples will become assets and liabilities of CBI. CBI will continue to operate Bank in the Bloomington, Illinois market area. * * * The name of Bank will be changed to conform with other Commerce affiliates."

42. The first paragraph of Exhibit A to said Prospectus/Proxy Statement reads as follows:

> "THIS AGREEMENT AND PLAN OF REORGANIZATION (this "Agreement"), dated as of the 20th day of October, 1994, by and between Commerce Bancshares, Inc. ("CBI"), a Missouri corporation registered as a bank holding company under the Bank Holding Company Act of 1956, as amended (the "Act"), Peoples Mid-Illinois Corporation ("Peoples"), a Delaware corporation registered as a bank holding company under the Act, and CBI-Illinois, Inc. ("CBI-Illinois"), a Delaware corporation and a wholly-owned subsidiary of CBI."

Pages 9, 25 and 29 ("A-9," "A-25," and "A-29") of said Exhibit A contain, among others, the following paragraphs:

> "Section 3.3 Peoples Bank Organization, Good Standing and Capital Stock. * * * The authorized capital stock of Peoples Bank consists of 116,200 shares of common stock, $20.00 par value per share. As of the date hereof, all shares of such common

stock of Peoples Bank are validly issued, outstanding, fully paid and nonassessable and owned of record and beneficially by Peoples free and clear of any liens, pledges, security interests, charges or other encumbrances.

* * * * *

4.3(b) Covenants Regarding Peoples Bank. After the Effective Time, Peoples Bank shall be operated in accordance with the established corporate policies and philosophies of CBI as such may be modified from time to time.

* * * * *

6.2(l) Financial Measures. The consolidated tangible net worth of Peoples and Peoples Bank shall be no less than $49,500.000. * * *."

Said Exhibit A to said Prospectus/Proxy Statement is signed by Andrew F. Anderson (as President and Chief Executive Officer of PEOPLES MID-ILLINOIS CORPORATION); David W. Kemper (as Chairman, President and Chief Executive Officer of COMMERCE BANCSHARES, INC.); and A. Bayard Clark (as Executive Vice President of said COMMERCE BANCSHARES, INC. and also as Vice President of CBI-ILLINOIS, INC.).

43. Commerce Bancshares, Inc. reached out beyond its own state (Missouri) to profit from creating continuing relationships and obligations as to its operation of the aforesaid Peoples Bank (renamed Commerce Bank), a bank which does business in Illinois and uses real estate situated in Illinois. 735 ILCS 5/2-209 (a) (1), (2), (3), (7), (10), (11) and (b) (4).

CONCLUSIONS AND PRAYER FOR RELIEF

Appendix

1. Peoples Mid-Illinois Corporation's aforesaid 1972 conversion of the aforesaid shares of the Peoples Bank of Bloomington to its own use was a gross and/or willful breach of its fiduciary duties to Althea M. Dick individually; to Althea in her capacity as "Life Tenant Under the Will of George F. Dick, Jr., Deceased"; and to plaintiff Helen A. Dick. Each subsequent transfer of said shares has been an additional gross and/or willful breach of fiduciary duties by said Peoples Mid-Illinois Corporation and its successor holding company (or companies).

2. At all times material hereto, Peoples Mid-Illinois Corporation and its successor holding company (or companies) have had actual notice of the Will of George F. Dick, Jr., and have known of the Bank's aforesaid 1982-1984 litigation and the aforesaid March 2, 1984 findings against the interests of holding company director George F. Dick III and his privy holding company.

3. The 2,730 George F. Dick, Jr. shares which were or ought to have been registered to Althea M. Dick as "Life Tenant Under the Will of George F. Dick, Jr., Deceased," after August 1, 1967 and the 1,830 shares Althea M. Dick owned individually after August 1, 1967 (a total of 4,560 shares) represented .076 of the 60,000 shares of the Capital Stock of the Peoples Bank of Bloomington which were issued and outstanding at the time of Peoples Mid-Illinois Corporation's 1972 conversion of said stock to its own use and beneficial enjoyment.

4. Peoples Mid-Illinois Corporation and its successor holding company (or companies) have been unjustly enriched and have profited as a result of the aforesaid conversion and other breaches of fiduciary duty (e.g., the subsidiary bank's failure to disclose/fraudulent concealment). Pursuant to the foregoing facts, Commerce Bancshares, Inc. is in

possession and control of all shares of the Capital Stock of the Peoples Bank of Bloomington and all dividends paid thereon since June 30, 1972.

WHEREFORE, plaintiff prays:

A. That the Court order and direct Peoples Mid-Illinois Corporation and its successor holding company (or companies) to replace and pay and deliver to plaintiff Helen A. Dick the aforesaid 2,730 shares of the Capital Stock of the Peoples Bank of Bloomington which were property of the estate of George F. Dick, Jr. and the aforesaid 1,830 shares of said Capital Stock which were the property of Althea M. Dick (individually) at the time of the June 30, 1972 conversion.

B. That the Court order and direct Peoples Mid-Illinois Corporation and its successor holding company (or companies) to account to the Court and plaintiff for all dividends declared on said Capital Stock since June 30, 1972.

C. That the Court determine the amounts by which defendants have been unjustly enriched since and/or due to the aforesaid 1972 conversion and enter judgment against one or more of said defendants for such amounts, together with interest thereon.

D. That the Court enter its judgment for exemplary damages against one or more of the defendants.

E. That the Court grant such other and further, or different, relief as the Court may deem just and proper, including judgment for plaintiff's costs and (if any) attorney fees.

Respectfully submitted:
Helen A. Dick
Helen A. Dick, pro se
3323 - 13th Ave. Court
Moline, Illinois 61265
Phone: (309) 762-7014

Appendix

[Exhibit "A" (Vol. I, C-18)
to Plaintiff's Complaint.]

I, GEORGE F. DICK, JR., of Bloomington, McLean County, Illinois, do make, publish and declare this to be my Last Will and Testament, hereby revoking all other Wills by me heretofore made.

It is my wish that the Executors hereinafter named shall pay my funeral expenses and debts, including Federal Estate and State Inheritance Taxes.

Whatever automobile I may own at the time of my death, I give to my wife, Althea M. Dick.

I hereby give a life estate in all of my property to my wife, Althea M. Dick, she to have the full possession and sole management thereof as long as she shall live.

I also empower my wife, Althea M. Dick, to have authority to sell, transfer and convey any of the assets in my estate during her lifetime which she may think is for the best interest of my estate and I waive the requirements of furnishing bond by her in said sales and the purchaser is not required to see to the proper application of the purchase money.

After the death of my wife, Althea M. Dick, the remaining Executor of this Will shall transfer and assign to my son, George F. Dick, III, Eighty (80) Shares of the Capital Stock of the Peoples Bank of Bloomington as and for his individual property.

All the rest and residue of my estate remaining shall pass to my son, George F. Dick, III, as Trustee, for

the benefit of my children, Helen Dick, Eleanor Dick Lyon, and Helen A. Dick, under the terms and conditions hereinafter set forth.

Said Trustee shall manage and care for the property that comes into his possession in the same manner that any prudent man would manage and care for his property; shall rent the land; look after the fertility thereof; insure the buildings for their insurable value; and do any and all things that any prudent owner would do in the management of his own land and property.

I own an undivided two-thirds (2/3) interest in a farm in West Township, McLean County, Illinois, my brother's Estate owning the remaining one-third (l/3). It is my desire that this farm be retained, if possible, however, I realize that the Carl R. Dick Estate may at some future time desire its interest sold. In such case, the Trustee herein is fully authorized to join in the sale of said farm so that the farm may be sold as a whole; he is fully authorized and empowered to make any contract necessary, and also to make deed or deeds conveying my interest herein as fully as I might do if living. My Trustee is also fully empowered to purchase my brother's one-third interest if he feels it is for the best interest of my estate so to do. In connection with the sale of real estate made by the Trustee herein, I waive bond required by statute, and no purchaser shall see to the proper application of the purchase price. If it should at any time during the life of the trust herein created be the desire of the Trustees of the Carl R. Dick Estate and the desire of George F. Dick, III, to partition said farm lands in kind, then George F. Dick, III, Trustee, in his discretion may agree to a partition, division or exchange or a sale and convert such undivided interest into an interest in severalty, or in

cash, and to that end the said George F. Dick, III, Trustee, is fully authorized to make all necessary contracts, and as such Trustee to execute all necessary deeds of partition and accept all conveyances which may be necessary or appropriate to accomplish such partition.

Said Trustee is fully authorized and directed to hold as an investment in said Trust Estate the Capital Stock of the Peoples Bank of Bloomington, which shall be a part of my Trust Estate. If it becomes necessary at any time to sell and dispose of said Stock due to the fact that any of my children find it necessary to go into the corpus of said Estate, then in that case the Trustee is empowered to sell and dispose of it. Said Trustee is also authorized to dispose of any other property in said Trust if he thinks it is for the best interest of said estate.

I desire my son, George F. Dick, III, to vote any and all Capital Stock of the Peoples Bank of Bloomington in said Trust Estate during the life of said Trust.

The income from said Trust Estate shall be divided into three equal parts and one part paid to each of my three daughters hereinabove names. I request that said distribution of income be made in quarterly payments.

The trust for my daughter, Eleanor D. Lyon, shall continue for and during her natural life, however, during her life should the income from her share in said Trust Estate not be sufficient for her proper maintenance and support, then the Trustee in his discretion is authorized to allow her to withdraw from the corpus such sums as may be necessary from time to time for her personal and individual comfort main-

tenance and support. Whatever is left in the corpus of said estate belonging to Eleanor D. Lyon at the time of her death, shall be equally divided between Helen Dick, Helen A. Dick and George F. Dick, III, and by the Trustee paid over to them.

At the death of my daughter, Eleanor D. Lyon, I desire the Trusts herein established for my three daughters shall cease and determine, and I authorize the Trustee herein to pay and turn over to my daughter, Helen Dick, her one-third interest in said Trust, less any withdrawals of principal made by her, and also to pay to Helen A. Dick, her one-third interest in said Trust, less any withdrawals of principal made by her. The Trustee is further authorized to distribute whatever remains in the corpus of the Trust established for my daughter, Eleanor D. Lyon, equally between my daughters, Helen Dick and Helen A. Dick, and my son, George F. Dick, III. In the event that the income from the Trust Estate going to Helen Dick and Helen A. Dick should not be sufficient for the proper maintenance and support of either of them, then the Trustee in his discretion is authorized to allow either one or both of them to withdraw from the corpus of their Trusts such sum as may be necessary from time to time for her or their personal and individual comfort, maintenance and support.

The Trustee shall keep a record of any withdrawals of principal made by any of my daughters during the life of the Trusts herein established and shall make distribution of the income from said Trusts, taking into account the withdrawals from said individual trusts on account of any withdrawals of corpus made individually by any of my daughters.

No interest under this Will shall be transferable

or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors, and all income distributions shall be paid to each beneficiary in person and not on any written order or assignment from any beneficiary.

The Trustee shall be entitled to reasonable compensation for his services.

My wife, Althea M. Dick, in her Will has established a Trust similar to the one I have established here and I authorize the Trustee in each of said Wills to consolidate the Trust in my Will and my wife's Will and to operate it as one Trust Estate.

I nominate and appoint my wife, Althea M. Dick, and my son, George F. Dick, III, to be the Executors of this my Last Will and Testament and request the Court to allow them to qualify as such without furnishing bond as required by statute.

I also nominate and appoint my son, George F. Dick III, to be Trustee under this Will and request that he not be required to furnish bond, and in the event that my son, George F. Dick III, should not act as Trustee, or for any reason should cease to act as Trustee, then the Peoples Bank of Bloomington, Bloomington, Illinois, is appointed Trustee under this Will with all the powers and authority given to my son, George F. Dick, III.

Dated at Bloomington, Illinois, this 14th day of July, A.D. 1953.

GEORGE F. DICK JR. (SEAL)

The foregoing instrument was on the date

thereof signed, sealed, published and declared by the said testator, George F. Dick, Jr., as and for his Last Will and Testament in our presence, who at his request and in his presence and in the presence of each other have subscribed our names hereto as witnesses, believing him to be of sound mind and memory at the time said Will was executed.

HELEN J. FIGG of Bloomington, Illinois

FRANK R. FIGG of Bloomington, Illinois

Appendix

[Group Exhibit "B" to Plaintiff's April 22, 1998 Complaint.]

STOCK HOLDERS LEDGER

SHEET NO.

(Mrs.)

NAME Althea M. Dick, Life Tenant Under Will of Geo. F. Dick, Jr., Deceased.

ADDRESS 116 S. Mercer Ave., Bloomington, Illinois.

DATE ISSUED OR SURRENDERED	TRANSFERRED FROM OR TO NAME	CERTIFICATE NUMBER ISSUED	CERTIFICATE NUMBER SURRENDERED	RECORD OF SHARES SHARES ISSUED	RECORD OF SHARES SHARES SURRENDERED	RECORD OF SHARES BALANCE
Sept 19 1955	Geo. F. Dick, Jr.	634		80.		91.
	"	635		11.		
Mar. 31 1959	Geo. F. Dick, III.		634		80	11
AUG 1 1957					11	None
AUG 1 1957		828		330		330
6 30 72	793 SHARES CONVERTED TO PEOPLES MID-ILLINOIS CORP.		828		330	None
7 3 72		25		330		330
10 26 72	Helen Dick		25		330	None

332-34-8022

PLAINTIFF'S EXHIBIT #7 2-22-84

Exhibit "B"

BEST AVA

LABLE COPY

SHEET NO. _____

STOCK HOLDERS LEDGER

Give Checks to G.F. Dick III

NAME Dick, Althea M. (mrs.)

ADDRESS ~~705 E. Empire St.~~, ~~116 S. Mercer Ave.~~ Peoples Park Bloomington, Ill.

DATE ISSUED OR SURRENDERED			TRANSFERRED FROM OR TO	CERTIFICATE NUMBER		RECORD OF SHARES		
MONTH	DAY	YEAR	NAME	ISSUED	SURRENDERED	SHARES ISSUED	SHARES SURRENDERED	BALANCE
JUN	18	1941	Geo. F Dick Jr.	570		25.		25-
Mar 29		1947	Galen E. Stutzman & Ernest H. Fox Exrs. etc Trustee U/W Estate Helen W. Peterson	575		10.		35-
OCT	15	1945	Henry A. Dannels, Henry C. & Estate Emerson C. Hewitt Jr. to Estate Belle Penn Taylor Hewitt	543		10.		45-
DEC	17	1954	Res Bill for Refd Emma McCarthy	479		13		58-
Mar.	27	1959	Mrs. Susan Wurzburger	660		3		61
AUG	1	1967					61	None
AUG	1	1967		827		1830		1830
6	30	72	PBB SHARES CONVERTED TO PEOPLES MID-ILLINOIS CORP.		827		1830	None
7	3	72		24		1830		1830
6	27	77	Peoples Mid-Illinois Corp.		24		500	
				253		1330		1330
2	22	78	Miss Helen Dick	312		443		
				313		887		887

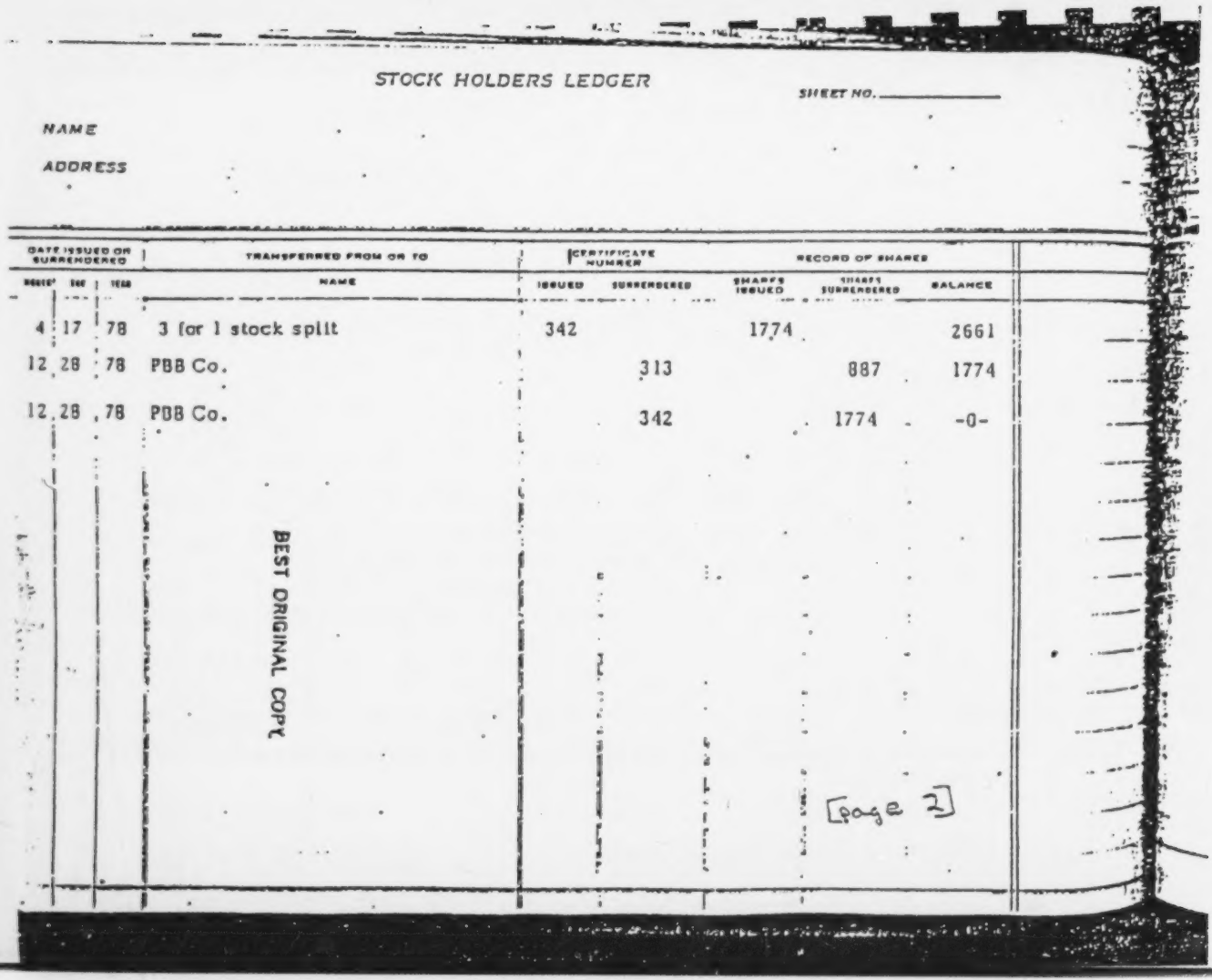
332-34-8012

(Over)

PLAINTIFF'S EXHIBIT #8

Appendix

[Group Exhibit "B" to Plaintiff's April 22, 1998 Complaint.]



STOCK HOLDERS LEDGER

SHEET NO. _____

NAME

ADDRESS

DATE ISSUED OR SURRENDERED			TRANSFERRED FROM OR TO	CERTIFICATE NUMBER		RECORD OF SHARES		
MONTH	DAY	YEAR	NAME	ISSUED	SURRENDERED	SHARES ISSUED	SHARES SURRENDERED	BALANCE
4	17	78	3 for 1 stock split	342		1774		2661
12	28	78	PBB Co.		313		887	1774
12	28	78	PBB Co.		342		1774	-0-

BEST ORIGINAL COPY

[page 2]

Appendix

[Group Exhibit "B" to Plaintiff's April 22, 1998 Complaint.]

STOCK HOLDERS LEDGER

SHEET NO. _____

NAME (Miss) Helen Dick,

ADDRESS Catalina Foothills Ldg. Apt. 93
~~[illegible]~~, 5250 N. Oracle Hwy
Tucson, Arizona 85704

DATE ISSUED OR SURRENDERED			TRANSFERRED FROM OR TO	CERTIFICATE NUMBER		RECORD OF SHARES		
MONTH	DAY	YEAR	NAME	ISSUED	SURRENDERED	SHARES ISSUED	SHARES SURRENDERED	BALANCE
Oct	1	1947	Minnie Grace Burton	566		2		2
Mar	1	1951	Peoples Bk. Trust Co. Kewanee, Ill. McCarthy	630		4		6
AUG	1	1967					6	None
AUG	1	1967		832		180		180
6	30	72	PBB SHARES CONVERTED TO PEOPLES MID-ILLINOIS CORP.		832		180	None
7	3	72		26		180		180
10	26	72	Althea M. Dick, Life Tenant U/W George F. Dick Jr., Deceased	140		330		510
11	30	72	George F. Dick, III Trustee U/W George F. Dick, Jr. Deceased		140		330	180
2	22	78	Althea M. Dick	312		443		623
4	17	78	3 for 1 stock stock split	346		1246		1869

329-22-5091

PLAINTIFF'S EXHIBIT # 11 2-22-84

STOCK HOLDERS LEDGER

SHEET NO. _____

NAME George F. Dick, III Trustee U/W Estate of George F. Dick, Jr. Deceased

PAR VALUE. $

ADDRESS Peoples Bank of Bloomington

DATE	ORIGINAL—TRANSFERRED FROM OR TO	CERTIFICATE NO.		RECORD OF SHARES			DIVIDENDS	
	DIVIDEND NUMBER AND PERCENTAGE	ISSUED	SURREN'D	ISSUED	SURRENDERED	BALANCE OUTSTANDING	PAID	DECLARED
11 30 72	Helen Dick	142		330		330		
4 17 78	3 for 1 stock split	344		660		990		
12 28 78	PBB Co.		142		330	660		
12 28 78	PBB Co.		344		660	-0-		

37-6106674

Appendix

[Group Exhibit "B" to Plaintiff's April 22, 1998 Complaint.]

STOCK HOLDERS LEDGER

SHEET NO.

NAME Marilyn S. Dick

ADDRESS

DATE ISSUED OR SURRENDERED			TRANSFERRED FROM OR TO NAME	CERTIFICATE NUMBER ISSUED	CERTIFICATE NUMBER SURRENDERED	RECORD OF SHARES SHARES ISSUED	RECORD OF SHARES SHARES SURRENDERED	RECORD OF SHARES BALANCE
8	1	67	Transferred from Geo. F. Dick, III	831		200		200
2	10	69	Julienne B. Dunn		831		200	None

BEST ORIGINAL COPY

PLAINTIFF'S EXHIBIT #35 AM 3-22-84

Appendix

[Group Exhibit "B" to Plaintiff's April 22, 1998 Complaint.]

SHEET NO. _____

STOCK HOLDERS LEDGER

NAME Mech. Geo F III

ADDRESS ~~Geo E Herbert~~

BLOOMINGTON, IL

DATE ISSUED OR SURRENDERED			TRANSFERRED FROM OR TO	CERTIFICATE NUMBERS		RECORD OF SHARES		
MONTH	DAY	YEAR	NAME	ISSUED	SURRENDERED	SHARES ISSUED	SHARES SURRENDERED	BALANCE
JUN	1	1937	Geo F Mech Jr	499	1/19/50.	1		1
Jan	19	1950	Geo F Mech Jr	574		9		10
Mar.	31	1959	Althea M. Dick	661		80		90
AUG	1	1967					90	None
AUG	1	1967		829		100		
AUG	1	1967		830		2400		2500
6	30	72	PEB SHARES CONVERTED TO PEOPLES MID-ILLINOIS CORP.		829		100	
					830		2400	None
7	3	72		119		2500		2500
4	17	78	3 for 1 stock split	343		5000		7500
3	5	80	(1,000 Shrs. to Delmar Rowe)		343		5,000	
3	5	80		565		1,000		
3	5	80		566		1,000		
3	5	80		567		1,000		
3	5	80		568		1,000		6,500

267-20-7868

(OVER)

A-26

PLAINTIFF'S EXHIBIT #26 C 2-23-84

Appendix

[Group Exhibit "B" to Plaintiff's April 22, 1998 Complaint.]

STOCK HOLDERS LEDGER

NAME George F. Dick, III

ADDRESS

SHEET NO.

DATE ISSUED OR SURRENDERED			TRANSFERRED FROM OR TO	CERTIFICATE NUMBERS		RECORD OF SHARES		
MONTH	DAY	YEAR	NAME	ISSUED	SURRENDERED	SHARES ISSUED	SHARES SURRENDERED	BALANCE
1	21	81						6,500
1	21	81	To PBB Co. (Richard T. Dunn)		565		1,000	5,500
1/21		81		583		620		6,120
2/	19/	81	To Betty H. Dick (Transfer)		566		1,000	
2	19	81	To Betty H. Dick (Transfer)		567		1,000	4,120

[Page 2]

BEST ORIGINAL COPY

Appendix

[Exhibit "C" (Vol. I, C-29) to Plaintiff's Complaint]

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

HELEN A. DICK,
Plaintiff,
v. No. 98-CH-56
COMMERCE BANCSHARES,
INC., CBI-ILLINOIS, INC.;
and PEOPLES MID-ILLINOIS
CORPORATION,
Defendants.

AFFIDAVIT

State of Illinois
ss.
County of Rock Island

I, Helen A. Dick, being first duly sworn, state the following under oath:

1. Throughout the Bank's action against George F. Dick III (McLean County 82-CH-124), the Bank was suing in its capacity of record as trustee. I trusted and relied upon the Bank and believed that the Bank (as my trustee) was revealing all causes of action and/or remedies to me. I also believed that the Bank was suing on all causes of action that existed as to property of the estates of George F. Dick, Jr. and Althea M. Dick.

2. The Bank (my trustee) has never revealed to me that the Bank could not sue its parent company and has never revealed to me the existence of any cause of action against the holding company.

3. I did not know or discover until on or about March 16, 1998 that the Bank (because a subsidiary)

could not sue the "parent" bank holding company (Peoples Mid-Illinois Corporation).

4. I did not know or discover, until on or about March 16, 1998, the existence of a cause of action against the holding company (Peoples Mid-Illinois Corporation) for replacement of shares of the Capital Stock of the Peoples Bank of Bloomington. 18 C.J.S. Corporations, § 281.

5. The Stock Holders Ledger pages attached as Exhibit "B" to the foregoing complaint are copies of Exhibits marked for identification during the pre-trial conference of February 22, 1984 in McLean County 82-CH-124. Said documents were not before the court for its consideration because the Bank's said action was dismissed "per Stipulation" between the Bank and George F. Dick III.

Helen A. Dick

Subscribed and sworn to before me at
Moline, Rock Island County, Illinois,
this 21st day of April, 1998.

Linda M. MacMillan
Notary Public

Page 2 of
Exhibit "C"

Appendix

[Plaintiff's Exhibit "J," Vol. III, C-636]

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

HELEN A. DICK,
Plaintiff,
v.
COMMERCE BANCSHARES, INC., CBI-ILLINOIS, INC.; and PEOPLES MID-ILLINOIS CORPORATION,
Defendants.

No. 98-CH-56

AFFIDAVIT

State of Illinois
ss.
County of Rock Island

I, Helen A. Dick, being first duly sworn, state the following under oath:

1. I did not know or discover until doing research, in or about early September 1998, while preparing my Supplement (filed September 11, 1998) to Plaintiff's Opposition, that it was not necessary to the formation and/or existence of a bank holding company (e.g., Peoples Mid-Illinois Corporation) that it have possession of all (100%) of the voting shares of a subsidiary.

Helen A. Dick

Subscribed and sworn to before me at Moline, Rock Island County, Illinois, this 19th day of October, 1998.

Mary Ann [Mitchell?]
Notary Public

Appendix

[Plaintiff's Exhibit "D," Vol. I, C-73]

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, HELEN M. [sic] DICK, ELEANOR DICK LYON, HELEN A. DICK YEAGER a/k/a HELEN A. DICK and HELEN A. DICK, JR., LLOYD R. YEAGER JR., CAROLINE M. DULANEY, ROBERT F. YEAGER, GEORGE D. YEAGER, JAMES DICK and GEORGE F. DICK IV;
Defendants.

- No. 82-CH-124

CONSTRUCTION OF TESTAMENTARY TRUSTS
[filed September 22, 1982]

Plaintiff, PEOPLES BANK OF BLOOMINGTON, as successor trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as trustee of trusts created by the Will of Althea M. Dick, deceased, names George F. Dick III, Helen M. [sic] Dick, Eleanor Dick Lyon, Helen A. Dick Yeager, a/k/a Helen A. Dick and Helen A. Dick, Jr., Lloyd R. Yeager, Jr., Caroline M. Dulaney, Robert F. Yeager, George D. Yeager, James Dick and George F. Dick IV as defendants.

Appendix

COUNT I

For its Count I against defendant, George F. Dick III, plaintiff alleges:

1. George F. Dick, Jr. died May 8, 1955 leaving a will dated July 14, 1953, which was admitted to probate in the County, now Circuit Court, of McLean County. His heirs, devisees and legatees were Althea M. Dick, his wife, and defendants Eleanor D. Lyon, Helen M. [sic] Dick, Helen A. Dick Yeager and George F. Dick III, his children. Helen A. Dick Yeager was the child of Eleanor D. Lyon and the adopted child of George F. Dick, Jr. and Althea M. Dick. A copy of the will of George F. Dick, Jr. is attached as Exhibit A.

2. Althea M. Dick (who died in 1976) and George F. Dick III were named and served as executors of the will of George F. Dick, Jr. until the final report of the executors on or about July 5, 1956. George F. Dick III was named and served as trustee of the trusts created by the will of George F. Dick, Jr. until December 26, 1978, when he resigned, and plaintiff became successor trustee.

3. Althea M. Dick died October 10, 1976, leaving a will dated January 23, 1969, which was admitted to probate in the Circuit Court of McLean County. Her heirs, devisees and legatees were the four defendants named in paragraph 1 supra. A copy of the will of Althea M. Dick is attached as Exhibit B. A chart showing family relationships is attached as Exhibit C to this complaint.

4. Defendant, George F. Dick III was named and served as executor of the will of Althea M. Dick until discharged January 15, 1979, when plaintiff became trustee of the trusts created by the will of Althea M. Dick.

5. George F. Dick III is an attorney. He was employed by plaintiff as Assistant Trust Officer in 1947,

became a Vice President and member of the Board of Directors in 1950, Executive Vice President in 1960, President in 1962, Chairman of the Board of Directors in 1976, and retired from the plaintiff bank in February of 1981.

6. The will of George F. Dick, Jr. contained the following, among other, provisions:

> I hereby give a life estate in all of my property to my wife, Althea M. Dick, she to have the full possession and sole management thereof as long as she shall live.
>
> I also empower my wife, Althea M. Dick, to have authority to sell, transfer and convey any of the assets in my estate during her lifetime which she may think is for the best interest of my estate and I waive the requirements of furnishing bond by her in said sales and the purchaser is not required to see to the proper application of the purchase money.
>
> After the death of my wife, Althea M. Dick, the remaining Executor of this Will shall transfer and assign to my son, George F. Dick, III, Eighty (80) Shares of the Capital Stock of the Peoples Bank of Bloomington as and for his individual property.
>
> All the rest and residue of my estate remaining shall pass to my son, George F. Dick, III, as Trustee, for the benefit of my children, Helen Dick, Eleanor Dick Lyon, and Helen A. Dick, under the terms and conditions hereinafter set forth.

* * *

I desire my son, George F. Dick, III, to vote any and all Capital Stock of the Peoples Bank of Bloomington in said Trust Estate during the life of said Trust.

* * *

No interest under this Will shall be transferable or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors, and all income distributions shall be paid to each beneficiary in person and not on any written order or assignment from any beneficiary.

7. Upon the date of his death in 1955 George F. Dick, Jr. was the owner of 91 shares of stock of plaintiff. On or about March 31, 1959, 80 shares of stock of plaintiff bank were transferred from the trust estate created by the will of George F. Dick, Jr. to George F. Dick III, who enjoyed the benefits of full ownership of such stock from that date on.

8. On or about August 1, 1967, there was a 30 for 1 split of plaintiff's stock, and on or about June 3, 1972, all of plaintiff's shares (except directors' qualifying shares) were exchanged on a 1 for 1 basis for shares of Peoples Mid-Illinois Corporation, a Delaware corporation and a one bank holding company, and on or about April 17, 1978, there was a 3 for 1 stock split of the shares of Peoples Mid-Illinois Corporation.

9. Plaintiff is uncertain whether under a proper construction of the will of George F. Dick, Jr.;

(a) It was proper for George F. Dick III, the trustee and defendant herein, to accept

and enjoy the benefits of said 80 shares of plaintiff prior to the death of Althea M. Dick in 1976.

(b) George F. Dick III should have received 80 shares of stock of plaintiff upon the death of Althea M. Dick in 1976 rather than the 2,400 shares resulting from the 30 for 1 stock split which occurred in 1972.

WHEREFORE, plaintiff prays:

A. That the Court construe the will of George F. Dick, Jr. with regard to questions raised in paragraph 9 supra.

B. If it was improper for defendant George F. Dick III to receive and enjoy the benefits of the bank shares prior to 1976 or if defendant George F. Dick III should have received 80 [rather than 2,400] shares in 1976, that defendant George F. Dick III be ordered and directed to account to plaintiff as successor trustee for the benefit of the beneficiaries for all stock or monies owing the trust estate.

C. That the Court grant such other relief as may be just and proper, including a judgment for plaintiff's costs and attorney fees.

COUNT II

For its Count II against the defendant, GEORGE F. DICK III, plaintiff alleges:

1, 2, 3, 4, 5 and 6. Plaintiff realleges paragraphs 1, 2, 5, 6, 7 and 8 of Count I as paragraphs 1 through 6 of this Count II.

7. The 11 shares of stock of plaintiff bank which were owned by George F. Dick, Jr. at the time of his death and which were not included in the conveyance to George F. Dick III in 1959, had become 330 shares as a result of a 30 for 1 split of stock of plaintiff bank,

and the 1 for 1 exchange on or about June 3, 1972, converted said shares into shares of Peoples Mid-Illinois Corporation.

8. In or about October of 1972, defendant George F. Dick III induced his sister, defendant Helen M. [sic] Dick, to borrow $20,625 from plaintiff bank, which sum was deposited in the trust account of the trust created by the will of George F. Dick, Jr. As a part of the same transaction, George F. Dick III induced his mother, Althea M. Dick, to sell said 330 shares of Peoples Mid-Illinois Corporation to Helen M. [sic] Dick; he then issued a check from said trust account in the sum of $20,625 to Helen Dick, and Helen Dick assigned said 330 shares to George F. Dick III as trustee under the will of George F. Dick, Jr. Helen Dick used the $20,625 check from the trust account to repay her loan to plaintiff bank. George F. Dick III as trustee paid $lll interest on Helen Dick's above-referred to loan from trust funds.

9. Plaintiff is uncertain whether the above-described transaction was for a proper trust purpose and authorized under the will of George F. Dick, Jr., and if not, whether such transaction resulted in any loss or damage to any trust beneficiary.

WHEREFORE, plaintiff prays that this Court determine whether under a true construction of the will of George F. Dick, Jr. the described transaction was proper, and if not, whether any loss resulted to any trust beneficiary, and if so, that judgment be entered against said defendant or defendants and that plaintiff have such additional relief as may be just and proper.

COUNT III

For its Count III against defendant, GEORGE F. DICK III, plaintiff alleges:

l-5. Plaintiff realleges paragraphs 1 through 5 of

its Count I herein as paragraphs 1 through 5 of this Count III.

6. The records maintained by defendant George F. Dick III disclose that commencing on or about June 11, 1971, and continuing until June 19, 1978, he, as trustee under the will of George F. Dick, Jr. failed to invest the trust funds he held, but in fact made unsecured loans to himself and to his then wife, Marilyn Dick, totalling $112,900, the largest unsecured sum outstanding at any particular time, being $88,900 from September 20, 1977 until June 18, 1978. The records maintained by defendant George F. Dick III further disclose that payments designated as principal or interest or both were made from time to time to George F. Dick III as trustee, with a final payment of $88,900 on June 19, 1978. A summary of the dates and amounts of said loans and repayments as shown by the records maintained by George F. Dick III is attached hereto as Exhibit D.

7. The use of trust funds by defendant George F. Dick III, referred to in the preceding paragraph, was a gross breach of defendant George F. Dick III's duties as trustee of the trusts created by the will of George F. Dick, Jr.

8. The trusts created by the will of George F. Dick, Jr. have suffered large losses, and George F. Dick III has profited as a result of his breaches of trust, and said defendant should account to the trusts and plaintiff as successor trustee for all such profits and for all losses suffered by the trusts.

WHEREFORE, plaintiff prays:

A. That the Court order and direct defendant George F. Dick III to account to the plaintiff as successor trustee for all profits or gains accruing as a result of any use by either George F. Dick III or Marilyn Dick of any funds of the trusts created by the will of George F. Dick, Jr.

B. That the Court determine the amount of the losses sustained by the trust estates resulting from the use of trust funds by said defendant and his then wife, Marilyn Dick.

C. That the Court enter judgment against defendant George F. Dick III for any profits made by defendant George F. Dick III and/or his then wife Marilyn Dick, and for all losses sustained by the trusts resulting from such use of trust funds by said defendant and/or Marilyn Dick.

D. That the Court enter its judgment for exemplary damages against said George F. Dick III, if the Court finds such damages justified.

E. That the Court grant such other relief as may be just and proper, including exemplary damages if justified by the evidence herein, and judgment for plaintiff's costs and attorney fees.

COUNT IV

For its Count IV against defendant, GEORGE F. DICK III, plaintiff alleges:

1-5. Plaintiff realleges paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of this Count IV.

6-7. Plaintiff realleges paragraphs 7 and 8 of Count I as paragraphs 6 and 7 of this Count IV.

8. On or about June 27, 1977, defendant, George F. Dick III, as executor of the estate of Althea M. Dick, sold 500 shares of stock of Peoples Mid-Illinois Corporation for $45,000 to Peoples Mid-Illinois Corporation, the one bank holding company which had acquired all the stock of Peoples Bank of Bloomington. This sale was not necessary for the proper administration of the estate of Althea M. Dick.

9. In view of George F. Dick III's position as Chairman of the Board of Peoples Mid-Illinois Corporation, as well as executor of the Estate of Althea M.

Dick, this does not appear to be an arms length transaction and George F. Dick [III] should be required to show that this sale was for a proper trust purpose and for a proper price.

10. A few months after this sale, the stock of Peoples Mid-Illinois Corporation was split 3 for 1, resulting along with other things in a substantial increase in value of said stock. George F. Dick III, as bank [sic] Chairman, knew or should have known of these developments and he failed to preserve the estate assets.

WHEREFORE, plaintiff prays judgment against defendant George F. Dick III for the amount, if any, by which the fair cash market value of said shares of Peoples Mid-Illinois Corporation exceeded the sum of $45,000 for which they were sold on or about June 27, 1977 and that plaintiff have such other and further relief as may be just and proper.

COUNT V

For its Count V against all defendants plaintiff alleges:

1-5. Plaintiff realleges paragraphs 1 through 5 of Count I for paragraphs 1 through 5 of this Count V.

6. The will of George F. Dick, Jr. contained the following among other provisions;

> My wife, Althea M. Dick, in her will has established a Trust similar to the one I have established here and I authorize the Trustee in each of said Wills to consolidate the Trust in my will and my wife's Will and to operate it as one Trust Estate.

7. Plaintiff has no other knowledge as to

whether Althea M. Dick had such a will in or about the time in 1953, when George F. Dick, Jr. executed his will, whether or not Althea M. Dick was contractually obligated to execute a similar will, and if so whether the will referred to in paragraph 3 supra complies with such contractual obligation, if any.

WHEREFORE, plaintiff seeks the aid and assistance of the Court in determining whether the will of Althea M. Dick should have been admitted to probate and the trusts therein provided created or whether the net estate of Althea M. Dick should go into the trust created by the will of George F. Dick, Jr., and for such other relief as may be just and proper.

COUNT VI

For its Count VI against GEORGE F. DICK III, HELEN M. [sic] DICK, ELEANOR DICK LYON, HELEN A. DICK YEAGER, LLOYD R. YEAGER, JR., CAROLINE M. DULANEY, ROBERT F. YEAGER, GEORGE D. YEAGER, JAMES DICK AND GEORGE F. DICK IV, plaintiff alleges:

1-5. Plaintiff realleges paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of this Count VI.

6. Certain of the above defendants claim that defendant George F. Dick III, as trustee of the trusts created by the will of George F. Dick, Jr. and/or as executor of the will of Althea M. Dick, improperly commingled the assets of said estates and also disposed of assets of said estates which he should have continued to hold, and disposed of such assets for less than their fair cash market value and committed various other breaches of trust prior to the time or times plaintiff became successor trustee of the George F. Dick, Jr. trust and trustee of the Althea M. Dick trusts.

WHEREFORE, plaintiff prays for discovery as to the nature and validity of the claims, if any, of said

defendants and for such other and further relief against said defendants as may be just and proper.

COUNT VII

For its Count VII against GEORGE F. DICK III, HELEN M. [sic] DICK, ELEANOR DICK LYON, HELEN A. DICK YEAGER, LLOYD R. YEAGER, JR., CAROLINE M. DULANEY, ROBERT F. YEAGER, GEORGE D. YEAGER, JAMES DICK and GEORGE F. DICK, IV, plaintiff alleges:

1-3. Plaintiff realleges paragraphs 1, 2 and 5 of its Count I for its paragraphs 1-3 of this Count VII.

4. The will of George F. Dick, Jr. contained the following, among other provisions:

> All the rest and residue of my estate remaining shall pass to my son, George F. Dick, III, as Trustee, for the benefit of my children, Helen Dick, Eleanor Dick Lyon, and Helen A. Dick, under the terms and conditions hereinafter set forth.
>
> * * * * *
>
> The Income from said Trust Estate shall be divided into three equal parts and one part paid to each of my three daughters hereinabove named. I request that said distribution of income be made in quarterly payments.
>
> The trust for my daughter, Eleanor D. Lyon, shall continue for and during her natural life, however, during her life should the from her share in said Trust Estate not be sufficient for her proper maintenance and support, than the Trustee in his discretion is

authorized to allow her to withdraw from the corpus such sums as may be necessary from time to time for her personal and individual comfort, maintenance and support. Whatever is left in the corpus of said estate belonging to Eleanor D. Lyon at the time of her death, shall be equally divided between Helen Dick, Helen A. Dick and George F. Dick, III, and by the Trustee paid over to them.

At the death of my daughter, Eleanor D. Lyon, I desire the Trusts herein established for my three daughters shall cease and determine, and I authorize the Trustee herein to pay and turn over to my daughter, Helen Dick, her one-third interest in said Trust, less any withdrawals of principal made by her, and also to pay to Helen A. Dick, her one-third interest in said Trust, less any withdrawals of principal made by her. The Trustee is further authorized to distribute whatever remains in the corpus of the Trust established for my daughter, Eleanor D. Lyon, equally between my daughters, Helen Dick and Helen A. Dick, and my son, George F. Dick, III. In the event that the income from the Trust Estate going to Helen Dick and Helen A. Dick should not be sufficient for the proper maintenance and support of either of them, then the Trustee in his discretion is authorized to allow either one or both of them to withdraw from the corpus of their Trusts such sum as

> may be necessary from time to time for her or their personal and individual comfort, maintenance and support.
>
> * * * * *
>
> No interest under this Will shall be transferable or assignable by any beneficiary (except by the Wills of Helen Dick and Helen
>
> A. Dick as provided above) or subject to the claims of their creditors, and all income distributions shall be paid to each beneficiary in person and not on any written order or assignment from any beneficiary.

5. Plaintiff understands that the following questions may not arise, but nonetheless asks the court's guidance to avoid a possible multiplicity of suits. While the will plainly states that the trusts shall all terminate and be distributed at the death of Eleanor D. Lyon, it is not clear what disposition the successor trustee should make of income or principal in the event either Helen M. [sic] Dick, Helen A. Dick or George F. Dick III, or any or all of them, predecease Eleanor D. Lyon. While the will of George F. Dick, Jr. contains the language "No interest under this will shall be transferable or assignable by any beneficiary (except by the Wills of Helen M. [sic] Dick and Helen A. Dick as provided above)," there is no previous provision so providing.

WHEREFORE, plaintiff prays that the Court construe the will of George F. Dick, Jr. and advise plaintiff successor trustee as to its duties as regards the proper disposition of both the income and corpus of said trusts in the event Helen Dick, Helen A. Dick, George F. Dick III, or any or all of them, should predecease said Eleanor D. Lyon.

PEOPLES BANK OF BLOOMINGTON, Successor Trustee of the trusts created by the will of George F. Dick, Jr., deceased, and as Trustee of the trusts created by the will of Althea M. Dick, deceased, Plaintiff

By SAMUELS, MILLER, SCHROEDER, JACKSON & SLY
By William M. Rice

THOMAS S. SLY
WILLIAM M. RICE
JOHN E. FICK
SAMUELS, MILLER, SCHROEDER, JACKSON & SLY
Attorneys for Plaintiff
406 Citizens Building
Decatur, Illinois - 62525
Telephone; (217) 429-4325

Appendix

[Plaintiff's Exhibit "E," Vol. II, C-448]

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON,
As Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al.,
Defendants.

No. 82-CH-124

ORDER [filed February 22, 1984]

1. February 15, 1984 defendant Helen A. Dick files Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment and Affidavit in Opposition to George F. Dick III's Motion for Summary Judgment

2. Objection by George F. Dick, III to standing of Helen A. Dick to argue Motions for Summary Judgment on Counts I, II, III and IV of the Complaint entitled Construction of Testamentary Trusts herein filed by the original plaintiff.

3. Arguments heard.

4. The Court finds Helen A. Dick is not a party to the causes of action alleged by the original plaintiff in said Counts I, II, III and IV, and in the absence of agreement of the parties to said counts may not independently submit factual matters or present argument relative to pending Summary Judgment Motions.

RICHARD M. BANER, Circuit Judge

Appendix

[Plaintiff's Exhibit "F," Vol. II, C-450]

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, As Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al.,
Defendants.

No. 82-CH-124

ORDER [filed March 2, 1984]

Count I

As to Count I the Court finds that a distribution of the remainder interest of "Peoples Bank" shares effective on the date of death of Althea M. Dick (October 10, 1976) should have been in the amount of 2,400 shares. I further find that any assignment of interest in shares by Althea Dick prior to her death was violative of the limiting provisions of the Will of George F. Dick, Jr. Summary Judgment is therefore entered in favor of the defendant as to the issue of remainder distribution of principal. Summary Judgment is entered in favor of the plaintiff as to the issue of assignment. The defenses of res adjudicata, estoppel, laches or statute of limitation[s] are not established.

The prayer for accounting is allowed as it

relates to the period of March 31, 1959 to October 10, 1976 and as to all shares during such period. Ruling is reserved as to remaining issues.

Count II

Both motions for Summary Judgment are denied.

Count III

Motion of plaintiff for Partial Summary Judgment is denied except as to a partial judgment and/or finding that the plaintiff has established a prima facie case that a breach of trust by the defendant has occurred. The burden of proof has now shifted to the defendant (See Illinois Evidence Manual, Gard, Section 5:11). To the extent the motion seeks additional relief it is denied. To the extent they relate to the above finding the defenses of laches, Chapter 17, Section 1684(2) and res adjudicata are not established.

Count IV

I find that under the peculiar facts of this cause, to the extent they are now before the Court, the plaintiff is not bound under res adjudicata by the final discharge order in the Estate of Althea Dick. I note particularly the corporate responsibility and position of the defendant at relevant times.

The motion of the defendant for Summary Judgment is denied. The defenses of laches and res adjudicata are not established.

The motion of the plaintiff for Partial Summary Judgment is denied except as to a Partial Judgment and/or finding that the transaction described appears on its face to be other than at arms length and for a

purpose which was not in the best interest of the trust. The burden of proof therefore has shifted to the defendant. To the extent the motion seeks other relief it is denied.

ENTERED: March 2, 1984

RICHARD M. BANER, Circuit Judge

Appendix

[Plaintiff's Exhibit "I," Vol. II, C-457]

RECORD SHEET

Case No. 82-CH-124 Page 12

* * *

3-14-84 Baner [Judge]

Cause Comes on For Hearing on B[ench] T[rial]. Counsel For Plaintiff & For Defendant Present Dismissal Stipulation Re Pending Issues. Benef[iciary] Helen A. Dick Objects. Arg[ument] Heard Re Settlement W/O Benef[iciary's] Approval. Authorities Reviewed And Court Offers To Consider Approval of Settlement If Requested By Plaintiff Trustee. Not Requested. Case Dismissed Per Stipulation Over Obj[ection] of Helen A. Dick. Court Advises Her of 30 Day Limit For Motion to Vacate. Unlimited Leave To Amend C/C Granted on 5/18/83 is Terminated & Leave to File is Granted For 45 Days. * * *

Appendix

[Defendants' Exhibit #6, Vol. I, C-164]

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, As Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,
v.
GEORGE F. DICK III, et al.,
Defendants.

No. 82-CH-124

STIPULATION
[filed March 14, 1984]

NOW COME PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and the Will of Althea M. Dick, deceased, plaintiff-counterdefendant, by Samuels, Miller, Schroeder, Jackson & Sly, its attorneys, and GEORGE F. DICK III, defendant-counterplaintiff, by Albert H. Hoopes and Tenney, Tietz & Heavner, his attorneys, and hereby stipulate that the claims and causes of actions [sic] and counterclaims of said parties now pending in this cause have been fully compromised and settled and, therefore, this cause should be dismissed as to these parties with prejudice.

PEOPLES BANK OF BLOOMINGTON,
as Successor Trustee of trusts
created by the Will of George F.

Dick, Jr., deceased, and
as Trustee of trusts created by the Will
of Althea M. Dick, deceased,

By SAMUELS, MILLER, SCHROEDER,
JACKSON & SLY, Its Attorneys

GEORGE F. DICK III, by his attorneys,
Albert H. Hoopes, and
TENNEY, TIETZ & HEAVNER

* * * * * *

ORDER

THIS CAUSE comes on for hearing on the Stipulation of PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Wills of George F. Dick, Jr., deceased, and Althea M. Dick, deceased, by Samuels, Miller, Schroeder, Jackson & Sly, its attorneys, and GEORGE F. DICK III, by Albert H. Hoopes and Tenney, Tietz & Heavner, his attorneys. The Court is fully informed in the premises; therefore,

IT IS ORDERED that the above and foregoing cause as to all pending counts involving causes of actions, claims or counterclaims by and between the parties to the said Stipulation be dismissed with prejudice, each said party to pay its or his own costs; costs are paid.

DATED this 14th day of March, 1984.

RICHARD M. BANER, Judge